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 Claimants CYLINK CORPORATION, CARO-KANN  
 12 CORPORATION and STANFORD UNIVERSITY

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 ROGER SCHLAFLY,

17 Plaintiff,

18 v.

19 PUBLIC KEY PARTNERS AND RSA DATA  
 SECURITY, INC.,

20 Defendants,  
 21

22 RSA DATA SECURITY, INC.,

23 Plaintiff,

24 v.

25 CYLINK CORPORATION and CARO-KANN  
 CORPORATION, et al.

26 Defendants.  
 27

FILED

JUL 31 1996

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE

169

No. C-94-20512 SW

~~DEFENDANTS~~ MOTION FOR  
 SUMMARY JUDGMENT AGAINST  
 MR. SCHLAFLY'S INVALIDITY  
 CLAIMS REGARDING THE  
 STANFORD PATENT

No. C-96-20094 SW

Date: September 4, 1996  
 Time: 10:00 a.m.  
 Courtroom: 4

Hon. Spencer Williams

**NOTICE OF MOTION AND MOTION**

Please take notice that on September 4, 1996, at 10:00 a.m. or as soon thereafter as the matter may be heard, defendants and counter-claimants Cylink Corporation ("Cylink"), Caro-Kann Corporation ("Caro-Kann") and The Board of Trustees of the Leland Stanford Junior University ("Stanford") (collectively "defendants") will move, and hereby do move, for summary judgment that Mr. Schlafly cannot carry his burden of proving with clear and convincing evidence that the claims of U.S. Patent Nos. 4,218,582 (the "Hellman-Merkle Patent") and 4,200,770 (the "Diffie-Hellman Patent") are invalid.

**MEMORANDUM OF POINTS AND AUTHORITIES**

On October 5, 1995, Mr. Schlafly filed a motion for partial summary judgment asserting invalidity of the two patents in suit based upon several grounds. On November 15, 1995, Caro-Kann Corporation filed a cross motion for summary judgment on those same grounds. Defendants have filed this motion to move for summary judgment of any other ground that Mr. Schlafly may have for alleging that any of the claims of the Hellman-Merkle Patent or Diffie-Hellman Patent are invalid. Thus, defendants do not seek to reopen or supplement the prior briefing on the grounds of invalidity already advanced and attacked by the parties.

The United States Patent Office considered and granted the Hellman-Merkle and Diffie-Hellman Patents. [Exhs. 1 and 2 hereto] Stanford University is the assignee of the two patents. [Id.] Caro-Kann Corporation, a wholly owned subsidiary of Cylink Corporation, is the exclusive licensee of the patents in suit. [Exh. 3 hereto]

1 The patents in suit are presumed as a matter of law to be  
 2 valid. 35 U.S.C. § 282. To overcome this presumption, Mr. Schlafly  
 3 carries the burden of proving invalidity by clear and convincing  
 4 evidence. See, e.g., American Hoist & Derrick Co. v. Sowa & Sons,  
 5 Inc., 725 F.2d 1350, 1360 (Fed. Cir.), cert. denied, 469 U.S. 821,  
 6 105 S.Ct. 95, 83 L. Ed. 2d 41 (1984). Moreover, on summary judgment  
 7 the patentee has "no obligation to introduce any evidence initially  
 8 on validity." Avia Group Int'l, Inc. v. L.A. Gear California, Inc.,  
 9 853 F.2d 1557, 1562 (Fed. Cir. 1988). Because Mr. Schlafly carries  
 10 the burden of proof, his failure to point to a genuinely disputed  
 11 issue of material fact in opposition to the previous motion or this  
 12 one will require entry of summary judgment in favor of the  
 13 defendants. Fed. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S.  
 14 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986); Avia  
 15 Group, 853 F.2d at 1562 (affirming summary judgment that defendant  
 16 failed to prove patent invalidity).

17 Mr. Schlafly can point to no genuinely disputed issues of  
 18 material fact that support his invalidity claims. Summary judgment  
 19 should therefore be entered against his claims and in favor of the  
 20 defendants.

21 Dated: July 31, 1996

22 MORRISON & FOERSTER LLP  
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24 By: 

25 Karl J. Kramer

26 Attorneys for Defendants/  
 27 Counter-Claimants CYLINK  
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 28 UNIVERSITY